

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(a). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER HARRISON
GOODINE,

Defendant and Appellant.

B286617

Los Angeles County
Super. Ct. No. GA101342

APPEAL from a judgment of the Superior Court of Los Angeles County, Suzette Clover, Judge. Affirmed as modified and remanded with directions.

Caneel C. Fraser, by appointment of the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Heidi Salerno, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Christopher Harrison Goodine of six firearm-related offenses. The trial court sentenced defendant to a total term of four years in prison. On appeal, defendant argues the court erred in sentencing him to a felony term for his violation of Penal Code¹ section 25400, subdivision (a)(2), carrying a concealed firearm, because the jury never found, nor was it asked to find, any of the sentencing factors necessary to increase the punishment for that crime from a misdemeanor to a felony. We agree and modify defendant's judgment to reflect that he was convicted of a misdemeanor violation of section 25400, subdivision (a)(2). We otherwise affirm the judgment and remand the matter for resentencing.

PROCEDURAL BACKGROUND

In August 2017, the People charged defendant with the following firearm-related offenses: possession of a silencer (§ 33410; counts 1 and 2); manufacturing, importing, keeping for sale, giving, or receiving a large-capacity magazine (§ 32310, subd. (a); counts 3 and 4); possession of an assault weapon (§ 30605, subd. (a); count 5); and possession of a concealed firearm (§ 25400, subd. (a)(2); count 7).² As to count 7, the People alleged: "[T]he firearm and unexpended ammunition were in the immediate possession of, and readily accessible to, the defendant and ... the firearm was not registered to the defendant."

¹ All undesignated statutory references are to the Penal Code.

² The information did not contain a count 6.

In October 2017, a jury convicted defendant of all six counts. The court sentenced defendant to a total term of four years in prison, consisting of the two-year midterm for count 5, plus three consecutive eight-month terms for counts 1, 3, and 7 (one-third midterm for each count), plus two concurrent two-year terms for counts 2 and 4.

Defendant filed a timely notice of appeal.

FACTUAL BACKGROUND

On June 21, 2017, two Los Angeles County Sheriff's Deputies saw defendant urinating in public at the Sierra Madre Villa Metro Station. After stopping defendant, the officers found a black duffle bag on the ground behind him. The officers conducted an inventory search of the bag and found the following items inside: an identification card with defendant's name on it; a loaded .40-caliber handgun; an extra magazine for the handgun; a loaded AR-15 assault rifle; an extra magazine for the assault rifle; two bags of live ammunition; and two cylindrical objects. The assault rifle was engraved with a serial number and the words "Restricted Law Enforcement/Government Use Only."

After defendant was arrested, he waived his *Miranda*³ rights and agreed to speak to two officers. Defendant admitted that all the firearms and accessories found in the duffle bag were his. Defendant had purchased the guns and accessories in Georgia, and he had travelled with them to California on a Greyhound bus. Defendant did not have any ownership or registration documents for the guns.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

An official with the California Department of Justice Bureau of Firearms conducted a search of the State's firearms registration database using defendant's name, which revealed no gun ownership or registration records. A search using the assault rifle's serial number revealed no records for the gun in the State's database.

A firearms expert inspected and tested the guns recovered from defendant's duffle bag. The type of assault rifle found in the bag is banned in California. The assault rifle was operable, and it could fire the 0.223-caliber ammunition found in the bag. The magazine attached to the assault rifle could hold 30 rounds of ammunition, which qualifies as a "high-capacity" magazine under California law.

The handgun appeared operable, and the attached 0.40-caliber magazine could hold 15 rounds of ammunition, which also qualifies as a "high-capacity" magazine in California. The expert opined that the cylindrical objects found in the duffle bag were homemade silencers, which were designed to attach to the barrels of the guns to suppress the noise they made when fired. The expert found gunshot residue on each of the silencers.

DISCUSSION

The only issue defendant raises on appeal is that his felony conviction for carrying a concealed firearm in count 7 must be reduced to a misdemeanor because the jury never found any of the enumerated sentencing factors necessary to increase the punishment for the crime from a misdemeanor to a felony. We agree.

Section 25400 makes it a crime to carry "concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person." (§ 25400, subd. (a)(2).) The crime is

punishable as a misdemeanor (§ 25400, subd. (c)(7)), unless the People plead and prove at least one of six enumerated sentencing factors that convert the crime into a wobbler⁴ or a felony. (See § 25400, subd. (c)(1)–(6).) For example, subdivision (c)(6) of section 25400 converts the crime of carrying a concealed firearm into a wobbler if the People prove both of the following: “(A) The pistol, revolver, or other firearm capable of being concealed upon the person is loaded, or both it and the unexpended ammunition capable of being discharged from it are in the immediate possession of the person or readily accessible to that person. [¶] [And] (B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.”

The Sixth and Fourteenth Amendments to the United States Constitution guarantee a criminal defendant the right to “ ‘a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.’ [Citations.]” (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 477; see also *People v. Gallardo* (2017) 4 Cal.5th 120, 128.) A defendant also has a Sixth Amendment right to have the jury

⁴ “There is ... a special class of crimes involving conduct that varies widely in its level of seriousness. Such crimes, commonly referred to as ‘wobbler[s]’ [citation], are chargeable or, in the discretion of the court, punishable as either a felony *or* a misdemeanor; that is, they are punishable either by a term in state prison or by imprisonment in county jail and/or by a fine.” (*People v. Park* (2013) 56 Cal.4th 782, 789.)

find “any fact that increases the penalty for a crime beyond the prescribed statutory maximum” (*Apprendi*, at p. 490.)

In this case, the People charged defendant with a felony violation of section 25400, subdivision (a)(2), alleging the crime qualified as a wobbler under subdivision (c)(6) of that statute. Although the court instructed the jury on the elements of a violation of section 25400, subdivision (a)(2), it never instructed the jury on the sentencing factors enumerated in subdivision (c) of section 25400, including those in subdivision (c)(6), which, if found true, would elevate the crime to a wobbler or a felony.⁵ The jury’s verdict forms also did not reference any of the factors set forth in section 25400, subdivision (c), instead asking the jury to find only whether defendant was “guilty of having a concealed firearm on the person, in violation of Penal Code section 25400(a)(2), a Felony, as charged in Count 7 of the information.” (Original formatting omitted.) Thus, when it convicted defendant of carrying a concealed firearm in count 7, the jury never made express findings as to any fact that would make the crime eligible for felony punishment. The court nevertheless sentenced defendant for count 7 as if he had been convicted of a felony violation of section 25400, subdivision (a)(2).

⁵ Specifically, the court instructed the jury as follows: “To prove that the defendant is guilty of [a violation of section 25400, subdivision (a)(2)], the People must prove that: [¶] 1. The defendant carried on his person a firearm capable of being concealed on the person; [¶] 2. The defendant knew that he was carrying a firearm; AND [¶] 3. It was substantially concealed on the defendant’s person. [¶] ... [¶] If you find the People have proved beyond a reasonable doubt that the defendant was carrying the firearm in the duffle bag prior to his being approached by the deputies, you may find the firearm was carried on the defendant’s person.”

The People contend we can infer the jury necessarily found true the factors enumerated in section 25400, subdivision (c)(6), based on its guilty findings for counts 3 and 4, which charged defendant with illegally importing, buying, or receiving large-capacity magazines (§ 32310, subd. (a)). Specifically, the People argue that because the jury found defendant was in possession of two large-capacity magazines, one for each of the two firearms he had concealed in his duffle bag, the jury necessarily found that “the unexpended ammunition capable of being discharged from it [were] in the immediate possession of [defendant] or readily accessible to [defendant,]” as required by subsection (A) of section 25400, subdivision (c)(6).

The People fail to acknowledge, however, that the jury never made, nor was it asked to make, any finding that defendant was not the registered owner of the firearm, as required by subsection (B) of that same subdivision. As we explained above, the jury must find true **both** sets of facts enumerated in subsections (A) and (B) for the crime of carrying a concealed firearm to be punishable as a felony under section 25400, subdivision (c)(6). To be sure, the record contains evidence that could support a finding that defendant was not the registered owner of the concealed firearm. But because the jury was never asked to find that defendant was not the registered owner of the firearm, it did not make all the findings necessary to render defendant’s violation of section 25400, subdivision (a)(2), punishable as a felony under subdivision (c)(6) of that statute.

In sum, we conclude the court erred when it sentenced defendant to a felony term for count 7. (See *People v. Palmer* (2001) 86 Cal.App.4th 440, 444 [“It violates fundamental notions of due process to deem a defendant convicted of an offense

on which the jury was never instructed.”].) Defendant does not, however, challenge the sufficiency of the evidence to support a finding that he committed a misdemeanor violation of section 25400, subdivision (a)(2). Instead, he requests only that we modify the court’s judgment by reducing his conviction for a felony violation of that section 25400, subdivision (a)(2), in count 7 to a misdemeanor and remand the matter for a new sentencing hearing. That is the appropriate remedy in this case. (See *People v. Edwards* (1985) 39 Cal.3d 107, 118.)

DISPOSITION

We modify the judgment to reduce defendant’s conviction in count 7 from a felony violation of section 25400, subdivision (a)(2), to a misdemeanor violation of that statute. We remand the matter for resentencing, after which the trial court shall prepare and forward to the Department of Corrections an amended abstract of judgment reflecting defendant’s modified sentence. We affirm the judgment in all other respects.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.